



JUDICIAL COUNCIL OF CALIFORNIA

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April 1, 2015

Hon. Marc Levine, Chair
Assembly Water, Parks and Wildlife Committee
State Capitol, Room 2141
Sacramento, California 95814

Subject: AB 455 (Bigelow), as introduced February 23, 2015 – Oppose
Hearing: Assembly Water, Parks and Wildlife Committee – April 14, 2015

Dear Assembly Member Levine:

The Judicial Council is opposed to AB 455. This bill, among other things, requires the Judicial Council, on or before July 1, 2016, to adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of an environmental impact report (EIR) for projects covered by a groundwater sustainability plan that require the actions or proceedings be resolved within 270 days of certification of the record of proceeding. AB 455 also prohibits a court from staying or enjoining those projects unless the court finds either of the following: (i) the continued construction or operation of the project presents an imminent threat to the public health and safety; or (ii) the project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the project. The bill specifies further that if the court finds that either of the above criteria is satisfied, the court shall only enjoin those specific activities associated with the project that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values. It is important to note that the Judicial Council's concerns regarding AB 455 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally

or the underlying merits of the projects covered by the legislation, as those issues are outside the council's purview.

AB 455's requirement that any lawsuit challenging an EIR for a project implementing a groundwater sustainability plan covered by the recently enacted Sustainable Groundwater Management Act, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, the timeline is triggered by *the certification of the record*, which is an action that takes place *before* the court has any jurisdiction or control over the proceedings. This means that the extremely tight 270-day period in which the trial court and Court of Appeal must issue their respective decisions on an action could—and likely would—begin weeks before the lawsuit is even filed. It makes no sense to have something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, the Judicial Council believes that the 270-day timeline will be unworkable in practice. During the council's development process for the rules to implement AB 900, it became clear that 175 days (which was the timeline under the enacted version of that bill) is an unrealistically short timeframe for the Court of Appeal to decide a large CEQA matter. This bill follows the approach taken in SB 743 ([Steinberg] Stats. 2013, ch. 386), which places the initial judicial review in the superior court. However, as was the case for initial review in the Court of Appeal, even assuming that no extensions of time are granted for any aspect of the proceeding, it appears that it will take about 175 days just to get to hearing in the superior court, much less to issue a decision, in the majority of these cases. Even if the superior court were able to issue its decision within 175 days, which is highly unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which the council believes to be infeasible.¹

Third, AB 455's expedited judicial review for all of the potential projects covered by the bill will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding these cases has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide. Moreover, delays in the administration of justice that would likely result from any expansion of this expedited judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

Fourth, providing expedited judicial review for the select projects covered by AB 455 while other cases proceed under the usual civil procedure rules and timelines, in the Judicial Council's view, undermines equal access to justice. The courts are charged with dispensing equal access to justice for

¹ In a typical civil appeal, it takes more than 95 days from when a trial court decision becomes final just for the record on appeal to be prepared and filed in the Court of Appeal. This does not include any time for briefing, oral argument, analysis of the issues, or preparation of a decision by the court.

Hon. Marc Levine

April 1, 2015

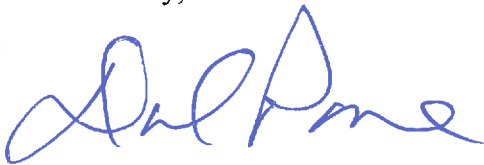
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each and every case on their dockets. Singling out this special category of cases for such preferential treatment appears at odds with how our justice system has historically functioned.

Finally, the provision in AB 455 that significantly limits the forms of relief that the court may use in any action challenging the projects covered by the legislation interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

For these reasons, the Judicial Council opposes AB 455.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Pone", with a stylized, cursive script.

Daniel Pone
Senior Attorney

DP/lmb

cc: Members, Assembly Water, Parks, and Wildlife Committee

Hon. Frank Bigelow, Member of the Assembly

Ms. Tina Cannon Leahy, Principal Consultant, Assembly Water, Parks, and Wildlife Committee

Mr. Robert Spiegel, Consultant, Assembly Republican Office of Policy

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor